

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:23-cv-00686-M-KS

KYLE MORGAN,

Plaintiff,

v.

KENNETH W. HAYDON,

Defendant.

ORDER

This matter comes before the court on the Plaintiff's application, filed pursuant to 28 U.S.C. § 1915, to proceed *in forma pauperis* ("IFP"). [DE 5]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Kimberly A. Swank entered a memorandum and recommendation ("M&R"), recommending that the court deny the application and direct Plaintiff to pay the requisite filing fee. DE 6. Judge Swank also advised that any objections to her recommendation must be filed on or before December 18, 2023. To date, no objections have been filed.¹

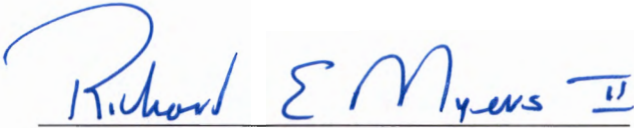
A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection

¹ Judge Swank issued the M&R on December 4, 2023. *See* DE 54. The Plaintiff's application and the M&R were submitted to this court for disposition on December 28, 2023.

is made.” *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for “clear error” and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS as its own the recommendation of the magistrate judge. For the reasons stated therein, Plaintiff’s application to proceed IFP in this case [DE 5] is DENIED. The case docket reflects that the Plaintiff paid the requisite filing fee on December 6, 2023; accordingly, the Clerk of the Court shall issue the requested summons and the action shall proceed in the usual order.

SO ORDERED this 2nd day of January, 2024.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE